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PUBLIC UTILITIES
COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF HAWAII

In the Matter of the Application of HAWAIIAN ELECTRIC COMPANY, INC. For Approval of Rate Increases and Revised Rate Schedules and Rules	DOCKET NO. 2008-0083

DIVISION OF CONSUMER ADVOCACY'S COMMENTS ON HECO'S MOTION FOR SECOND INTERIM INCREASE FOR CIP REVENUE REQUIREMENTS, OR IN THE ALTERNATIVE, TO CONTINUE ACCRUING AFUDC FOR THE CIP CT-1 PROJECT

I. BACKGROUND AND INTRODUCTION.

On July 2, 2009, the Hawaii Public Utilities Commission ("Commission") issued its Interim Decision and Order ("Interim D&O") in the instant docket. The Interim D&O rejected several elements of the Settlement Agreement[1] reached between the Parties in this Docket, including the proposed partial recovery of HECO's Campbell Industrial Park Combustion Turbine Unit One ("CT-1"). On November 19, 2009, pursuant to Section 6-61-41 of the Commission's Hawaii Administrative Rules of Practice and Procedure, Title 6, Chapter 61 of the Hawaii Administrative Rules ("HAR"), the Hawaiian

[1] The Stipulated Settlement Letter ("Settlement Agreement") was filed with the Commission on May 15, 2009.

Electric Company, Inc. ("HECO") filed its Motion for Second Interim Increase for CIP CT-1 Revenue Requirements, or in the alternative, To Continue Accruing AFUDC for the CIP CT-1 Project ("Motion").

The Division of Consumer Advocacy ("Division" or "Consumer Advocate") respectfully submits its comments on HECO's Motion requesting either a Commission Order granting a second interim revenue increase or continuation of Allowance for Funds Used During Construction ("AFUDC") for the Campbell Industrial Park ("CIP") Combustion Turbine Unit 1 ("CT-1") Project.[2] As noted in the HECO Motion, the revenue requirement arising from HECO's investment in CT-1 was included in the Settlement Agreement among the parties in Docket No. 2008-0083.[3] The Division does not object to HECO's proposed second interim revenue increase for recovery of CT-1 costs, provided that such revenue increase is calculated in a manner consistent with the Settlement Agreement, as more fully described herein. The Division does object to HECO's proposed alternative relief in the form of continued AFUDC for the CT-1 investment because such relief is inconsistent with the Settlement Agreement and would likely yield excessive future charges to HECO ratepayers while creating precedent for a new form of rate relief that has not been supported in the evidentiary record in this Docket.

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2 HECO Motion filed November 19, 2009 in Docket No. 2008-0083.

3 Settlement Agreement, page 88 CT-1 provisions.

II. DISCUSSION.

In its Motion, HECO seeks the Commission's approval of a Second Interim Decision and Order, pursuant to Hawaii Revised Statutes § 269-16(d) (Second Interim), with such Second Interim authorizing an additional interim increase for HECO's test year revenue requirements of $12,671,000.[4]

HECO provides for the Commission's consideration, three optional paths that would allow HECO to earn a return on its CT-1 investment. In brief summary, the three options include the following:

- Option No. 1 - Allow recovery of $12.7 million[5] in additional revenues, by including CT-1 within plant in service based upon a determination that CT-1 is "used and useful."
- Option No. 2 - Allow recovery of $12.7 million in additional revenues, but including CT-1 investment in rate base as "property held for future use."
- Option No. 3 - Allow HECO to reclassify the cost of the CT-1 project as construction work in progress ("CWIP") and then allow HECO to continue to accrue AFUDC until the Commission awards a second interim upon its determination that an operational supply of biodiesel has been obtained.

HECO also proposes that any increase that the Commission may grant as a result of this motion should be allocated in the percentages reflected in the cost of

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4 HECO's revenue requirement request for $12,671,000 includes costs for the CT-1 water treatment system which is expected to be in service by December 15, 2009.

5 $12.7 million would include approximately $11 million for rate base related revenue requirements and $2 million for expense related revenue requirements.

service, rate increase allocation, and/or rate design as set forth in Exhibit 1 of the Settlement Agreement.

HECO states that the Commission's determination of a second interim increase and resulting amounts collected would be subject to refund if not allowed in the final order. Therefore, HECO contends that the Commission could track HECO's progress in obtaining biofuel and could ultimately remove all CT-1 costs from rate base if satisfactory compliance is not demonstrated by HECO.

As more fully described herein, the Consumer Advocate supports Options Nos. 1 and 2 and opposes Option No. 3. As explained in the Consumer Advocate's response to PUC-IR-117, the Consumer Advocate recognizes the need for this unit and would support a finding, for the purpose of energy security, reliability and sustainability for the 2009 test year that the CT-1 unit is used and useful. Further, the Consumer Advocate would offer that the use of the asset in this capacity has been reasonably demonstrated by evidence provided by HECO to justify rate base inclusion and an order to this end would appear to be within the Commission's jurisdictional authority.

Alternatively, the Consumer Advocate would not object to HECO's proposed Option No. 2 as the Commission could consider its precedence of treating certain property investments that are not presently and fully used and useful as Property Held for Future Use ("PHFFU") within rate base. PHFFU assets have been reflected in rate base by the Commission, which allows a return on the investment, but not a return of the investment (depreciation) until that investment can later be classified as plant in service.

Notwithstanding the Commission's finding in Interim Decision and Order, on July 2, 2009, evidence of record supports a finding that CIP CT-1 is used and useful in the 2009 test year due to some extent, based upon, the following considerations:

a. The recorded peak load for 2009 to-date (provided informally by HECO as of September 25, 2009) for HECO's system was 1,220 MW which is higher than the May 2009 Sales & Peak ("S&P") for the years 2009 through 2013, See Docket No. 2008-0083, HECO ST-4 at 10-11. This updated forecast represents an approximate 3.1%[6] higher forecast than the May 2009 forecast and translates into a higher reserve capacity shortfall for the 2009 test year;[7]

b. Based on the Consumer Advocate's understanding of HECO's system and the capabilities of the existing generating units, availability of CIP CT-1 may be critical to mitigate risks to the system due the occurrence of a natural disaster or other serious disturbance;

c. Similarly, availability of CIP CT-1 may prove to be necessary during critical and high-risk scenarios such as (1) insufficient spinning reserve to cover

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6 Based on HECO's May 2009 S&P forecast, its net system peak, with future demand side management but without load management and Rider I, for the year 2009 was 1,183 MW.

7 It should be noted, however, that the Company's reserve capacity analysis conducted in Docket No. 2008-0083 HECO ST-4 is based on its Loss of Load Probability ("LOLP") criteria in which the Company's system must have sufficient generation capacity to serve system load with the incurrence of one day's outage of the system in every 4.5 years. In Docket No. 05-0145, the Consumer Advocate raised concerns that HECO's LOLP may need to be more stringent (i.e., higher such as one day's outage in every six years) if reliability concerns outweighed other factors, such as cost. The Consumer Advocate is not recommending a specific value for the LOLP criteria at this time, but it should be recognized that establishing a more stringent criteria to accommodate higher reliability expectations with the introduction of more intermittent renewable sources of energy would likely result in the forecasted reserve capacity shortfall over the years 2009 and beyond to be even greater than is currently estimated.

the loss of any generation unit; (2) insufficient generation to serve load; and (3) the occurrence of an island-wide blackout; and

d. The Commission's acknowledgement that HECO will work with Commission and the Consumer Advocate if there is an interruption of the biofuel supply, an emergency, or an operational problem affecting the use of CIP CT-1. See, Decision and Order No. 23457, filed on May 23, 2007, in Docket No. 2005-0145, at 32.

A. CURRENT STATUS OF CIP CT-1.

In Docket No. 05-0145, regarding HECO's application for Commission approval to commit funds for the CIP CT-1, the Commission granted approval of the investment provided that "no part of the Project may be included in HECO's rate base unless and until the Project is in fact installed, and is used and useful." See, Docket No. 05-0145, Decision and Order No. 23457, at 53-54, Ordering Paragraph No. 1. The Commission, subsequently, expressed concern that HECO negotiated pricing and terms which were not reasonable nor prudent and not in the public's interest in denying HECO's application for approval of a Biodiesel Supply Contract dated August 13, 2007 between HECO and Imperium Services, LLC. See, Docket No. 2007-0346, Decision and Order, at 18-19 ("Imperium Decision and Order").

HECO acknowledges that the Commission's denial of interim relief for CT-1 was reasonable due to the lack of a viable biofuels contract. HECO has since demonstrated its commitment to meet the biofuel condition by purchasing an initial test supply of biofuel without Commission approval.

B. USED AND USEFUL STANDARD.

The concept of "used and useful" traditionally represents property or utility plant assets that are reflected in the utility's Plant In Service and included in rate base, when and if such property or plant assets are currently providing or capable of providing utility service to the consuming public. Robert L. Hahne, Gregory E. Aliff, & Deloitte & Touche LLP, Accounting for Public Utilities, § 4.03 (2004). Thus, traditionally, the determination of used and usefulness relied upon the completion of the construction or procurement of a plant, property, or equipment item and the reclassification of that item from a plant account, such as construction work in progress or, perhaps, property held for future use, to the Plant In Service primary account.

HRS § 269-16 governs the regulation of utility rates and ratemaking procedure for the present proceeding. HRS § 269-16(a) requires that all "rates, fares, charges, classifications, schedules, rules and practices made, charged, or observed by any public utility . . . shall be just and reasonable." In implementing this standard, HRS § 269-16(b) provides that a utility's just and reasonable rates "shall provide a fair return on the property of the utility actually used or useful for public utility purposes." As such, in determining exactly what property is properly included in HECO's rate base, said property must be deemed to be used or useful in regards to public utility purposes, as the term is contemplated under HRS § 269-16.

The used or useful substantive standard is of statutory origin and has been interpreted and applied in the Courts of this State. The Commission should note, however, is that no clear and precise definition of the statutory term has been defined by a Court of this jurisdiction. Rather the law indicates that the analysis as to whether

an asset should be included in a utility's rate base should be conducted on a case-by-case basis, taking into consideration the unique circumstances of each situation.

To the limited degree that Hawaii Courts have applied the used or useful standard, said Courts have recognized the principal that where a utility's property should provide more than an incidental benefit to the utility to be considered for inclusion in the utility's rate base. See Honolulu Gas Co. v. Public Utilities Commission, 33 Haw. 487 (1935). In Honolulu Gas Co., the Hawaii Supreme Court upheld the Public Utility Commission's decision to exclude certain land and buildings owned by the utility and located adjacent to the plant site, and occupied by utility employees. While the Court acknowledged that the utility derived incidental benefit from said property, the court held that said property was not properly included in the utility's rate base for ratemaking purposes. Id. at pgs. 13. Further, in the context of deciding whether to allow the utility to include its' leasehold property used as its main office for operation, the Court considered and compared the actual benefit that would be derived from said property. Though incidental benefit could be derived from said property as it was actually used by the utility as its main office, the Court refused to allow it to be included in rate base because evidence was submitted that the lease was valueless. In support of its decision, the Court stated:

> The Federal Supreme Court has repeatedly held that what a company is entitled to demand in order that it may have just compensation is a fair return upon the reasonable value of the property at the time it is being devoted to public use. A company is entitled to the benefits of wise and judicious investments but on the other hand if it make an investment or enter into a contract which is reckless or improvident or which turns out to its disadvantage, the loss sustained in not underwritten by the community. Id. at 515 - 516.

This analysis is consistent with law from other jurisdictions. As articulated by one Court as follows:

> One of the cardinal principles of this state's public utility law is that, in the setting of rates for services to the public, a utility company is entitled to a return only on such of its property as is 'used and useful' in the public service.... The fact that a utility owns a property does not of itself justify its inclusion in the rate base; and the burden is on the utility to show that the property is 'used and useful' in the public service. Barasch, 516 Pa. at 162, 532 A.2d at 334-35 (citations omitted).
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> See, Barasch v. Pennsylvania Public Utility Com'n, 562 A.2d 414 (Pa.Cmwlth., Jul 18, 1989). See also Pennsylvania Water & Power Co., 193 F.2d 230 (D.C. Cir. 1951), aff'd, 343 U.S. 414 (1952) (disallowing costs for dam devices that were deemed experimental, and abandoned facilities, from rate base); Chicago Dist. Elec. Generating Co., 2 F.P.C. at 421 (disallowing the cost of real estate held for future use at a time or in a manner too "indefinite").

Therefore, in rendering a decision as to whether the CT-1 unit should be included in HECO's rate base, the Commission is not bound by strict definitions of what property is used or useful for public utility purposes. This Commission should take into consideration the unique circumstances of this case, keeping in mind that the fact that the CT-1 unit provides more than an incidental benefit to HECO and rate payers would justify its inclusion into rate base. The Consumer Advocate respectfully submits that this Commission should pay close attention at whether CT-1 is necessary for the existing reliability criteria and whether said facilities are being used for their intended purposes. If the Commission finds that said facilities are necessary to the existing generation, and are being used for their intended purposes, CT-1 should be included in HECO's rate base.

In Docket No. 05-0145, the Consumer Advocate supported HECO's request to be allowed to commit the funds required and to construct CIP CT-1, but with the

requirement that biofuels be used to fuel the unit and that HECO work with the Department of Business and Economic Development and Tourism ("DBEDT") to develop a local resource for biofuels (see, e.g., CA-T-1 in Docket No. 05-0145, page 76). The Consumer Advocate's recommendation was predicated on various factors such as the Consumer Advocate's support for facilitating the transition to a more sustainable energy future and also relied upon, at least in part, on various assertions made by outside parties and DBEDT regarding the status of the biofuels industry and the probability of expected availability of biofuels. As recent events have shown, however, the current status of the biofuel industry has not supported the vision and expectations that existed at the time of Docket No. 05-0145.

It should be noted, however, that even with the high expectations for the biofuel industry that existed during the Docket No. 05-0145 proceeding, the parties to that docket recognized the possibility that there may unforeseen events that might cause an interruption of the supply of biofuel. Hence, as articulated in Exhibit A to the Joint Stipulation filed in Docket No. 05-0145, HECO would seek to work with the Consumer Advocate and Commission to address the possible interruption of the biofuel supply.

In Decision and Order No. 23457, Docket No. 2005-0145, the Commission noted the need to address contingencies due to the possibility of an interruption of the biofuel supply, emergency or operational problem affecting the use of CIP CT-1 as provided in the Joint Stipulation between HECO and the Consumer Advocate. See, Decision and Order No. 23457, at 32.

Notably, the Commission made a specific finding that "the need is immediate, and that the Project must be installed by July 2009 or as early as possible, as requested by

HECO." Id. at 43. The Commission also stated "that the Project may not be perfect. However, this Project is a step in the right direction toward energy security and sustainability, as we address the immediate and growing need for electricity generation." Id. at 48.

C. SETTLEMENT AGREEMENT TREATMENT OF CT-1 COSTS.

The Company's proposed rate case treatment of CIP CT-1 in its Application and Direct Testimony included full recovery of the annualized cost of CT-1 by implementation of a step rate increase at the estimated date of commercial operation of the new generating unit.[8] In its Direct Testimony, the Consumer Advocate objected to this proposal and recommended recovery of the costs of CT-1 on an average test year basis, consistent with the balance of the revenue requirement determination in this Docket.[9] The Department of Defense also opposed HECO's recommended annualization treatment of CT-1 costs and recommended average test year treatment of CT-1.[10]

The Settlement Agreement among the Parties in this Docket resolved HECO's CIP CT-1 Step Increase proposal at paragraph 52, as follows:

> 52. HECO's revenue requirements in its application were based on including the "full" cost of the CIP CT-1 generating unit (as estimated at the time of the application), and HECO proposed an interim step increase that did not include the CIP CT-1 cost, and a later step increase when CIP CT-1 goes into service at the end of July that was based on the full incremental cost of adding CIP CT-1 (excluding depreciation, which does

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8 Application dated July 3, 2008, page 3.

9 CA-T-1, page 8; CA-T-3, pages 17, 20-21.

10 DOD T-1, pages 7-8.

not begin until the following year). See HECO-101, page 4. HECO asserts that it followed Commission precedent in proposing the CIP CT-1 step, as discussed in HECO T-1.

The Company further stated that if the Commission does not approve the CIP CT-1 step increase, the interim increase (and effectively the final increase) should be based on the "base case" which includes the 2009 CIP CT-1 plant additions (net of deferred income taxes) in the end of test year rate base balance but not in the beginning of test year rate base balance (HECO-101, page 3, footnote 2).

The Consumer Advocate and the DOD opposed inclusion of the "full" cost of CIP CT-1 in revenue requirements, and proposed that a fully average test year be used. Based on the joint decoupling proposal of the Company and the Consumer Advocate in the decoupling docket, which incorporates a RAM rate base adjustment in 2010 that includes actual year-end 2009 plant balances (as well as conservatively estimated plant additions in 2010), HECO (as part of the global settlement agreement) has agreed to the use of the fully average test year, without a separate CIP CT-1 Step Increase or annualized ratemaking treatment of CIP CT-1 costs.[11]

This Settlement Agreement resolution of ratemaking for CT-1, using an average test year without annualization of CT-1 costs, was a key element of the overall settlement that was reached. Pursuant to the Settlement Agreement, the capital invested in CT-1 is included in the two-point average rate base,[12] but the balance is only reflected as of the end of 2009 but not at the beginning of 2009. Operating and Maintenance ("O&M ") expenses for the unit were provided for only the last five months of the year, based upon the estimated July 2009 in service date for the unit. Another important element of the agreed upon treatment of CT-1 in the Settlement Agreement is

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11 Settlement Agreement, Exhibit 1, page 88; filed on May 15, 2009.

12 The use of a two-point average rate base refers to the "simple average" method of averaging only the beginning and ending balances, i.e., two points, to determine the average value.

the omission of any depreciation expense for the unit, since the accrual of depreciation will not commence until 2010, which is outside the 2009 test year.[13]

While the precise in-service date was not known when either HECO or the Consumer Advocate/DOD evidence was filed, the estimated costs, in-service dates and other uncertainties regarding CT-1 assumptions within the Company's filing were addressed in the compromises made by the Parties within the Settlement Agreement. There is intentionally negotiated conservatism associated with average test year treatment of CT-1 under the Settlement Agreement, because that treatment:

- Effectively halves the return costs, by including CT-1 costs in only the last half of the average test year computation,
- Includes only the CT-1 lower cost estimates of $167.5 million (at ½ due to averaging), with no accounting for the higher actual incurred costs to complete construction,[14]
- Reduces O&M costs to provide only a partial year allowance, and
- Eliminates any depreciation recovery.

Any effort by HECO in its Motion to circumvent the Settlement Agreement by pursuing alternative regulatory treatment of CT-1 at this time is highly objectionable and is contested by the Consumer Advocate in this response.

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13 This depreciation methodology is consistent with HECO's normal depreciation practices.

14 See Revised Schedules Resulting from Interim Decision and Order filed by HECO on July 8, 2009, at Exhibit 3, pages 7-8, for a discussion of amounts embedded in the test year Settlement that were removed in compliance with the Interim D&O.

D. HECO'S SECOND INTERIM RATE INCREASE PROPOSAL.

HECO's Motion "requests that the Commission issue a second interim decision and order as soon as possible authorizing an additional interim increase in the amount of $12,671,000." In attached Exhibit 1, HECO provides calculations quantifying the incremental revenue requirements for CT-1 at cost levels consistent with the Settlement Agreement, including costs of the CT-1 water treatment facilities that are expected to be operational in December of 2009.[15] The Consumer Advocate has reviewed these calculations and does not dispute the accuracy of HECO's proposed second interim increase. For the reasons stated herein, the Consumer Advocate does not object to a second interim increase for HECO based upon either the Plant in Service or Property Held for Future Use options described by HECO as Option one and Option two, respectively, in its Motion.[16]

In its Motion, HECO describes the Commission's Interim Decision and Order in this Docket and recites the history of the Imperium biofuels contract and related D&O and then concludes, "...that the Commission would not support the inclusion of the CIP CT-1 capital costs in rate base unless (1) the generating unit is actually installed and running, and (2) there is an evidence of a secured biodiesel supply." The Company then asserts the following in support of a second interim rate increase for CT-1:

> Hawaiian Electric's efforts since then to order the test supply of biodiesel and to expeditiously carry out the RFP for an operational supply of biodiesel demonstrate that supplies of biofuels will be available and that the Company is making the appropriate commitments to obtain them. The Company took to heart the lessons learned in the Imperium case and the current biofuels arrangements can be regarded as real and as viable. Furthermore, by taking the risk of purchasing the initial supply without

15 *HECO Motion* page 1 and footnote 1.

16 Id, pages 5-6.

> Commission approval, the Company is finally demonstrating its commitment to meeting the conditions of the order authorizing CT-1. Stated otherwise, to the extent that the Commission was saying that a "used and useful CT-1" needed to be a "used and useful biofueled CT-1," the Company is making clear its compliance with the full condition that went with the approval of CT-1.[17]

After describing the history of CT-1 construction and biofueling issues, HECO asserts that its progress toward satisfying the biofueling commitment for the unit justifies approval of one of three options to allow the Company to earn a return on its investment in CIP CT-1 at this time:

- Option one – approve a second interim increase of $12.7 million on the basis that the unit is properly included in Plant in Service ("PIS") and is used and useful to address reserve margin shortfalls and to provide blackstart capability.
- Option two – approve a second interim increase treating CT-1 as Property Held for Future Use ("PHFFU"), because an operational supply of biodiesel has not yet been obtained, or
- Option three – allow the Company to reclassify the cost of the project included in plant in service to construction work in progress ("CWIP") and to accrue AFUDC until an operational supply of biodiesel is obtained, and to allow a second interim later when the fuel supply is obtained.

Either Option One or Option Two, if adopted by the Commission, would support a significant second interim revenue increase for HECO that would be consistent with the Settlement Agreement in this Docket. The Consumer Advocate does not object to

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[17] Id. page 3-5.

Commission approval of either of these options. Option three, on the other hand, is wholly inconsistent with the rate case Settlement Agreement and should not be approved for the reasons set forth in Section E of this response.

One distinction between Options one and two that may impact the allowed revenue increase is the treatment of partial year O&M expenses allowed for CT-1 in the Settlement Agreement of approximately $1.5 million.[18] Generally, property held for future use does not require the incurrence of O&M expenses because of the inactive status of the asset. Given the availability of CT-1 to meet reserve shortfall conditions and to provide emergency black start capabilities, as well as HECO's ongoing efforts to acquire and test biofuels in the unit, recovery of this reduced level of O&M would appear reasonable, based on these unique facts and circumstances, and should be allowed by the Commission without regard to whether Option one or Option two is authorized.

Another important distinction between Option one and Option two is the timing of commencement of depreciation expense accruals and the treatment of CT-1 in any Commission-approved RAM calculation that may result from completion of Docket No. 2008-0274. With respect to depreciation, if the CT-1 investment is recorded within PHFFU, the asset is not in service and HECO would not be required to commence recording depreciation expense accruals in January 2010. In the absence of an approved RAM tariff, HECO shareholders would not be required to absorb depreciation

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18 The Revised Schedules Resulting from Interim Decision and Order filed by HECO on July 8, 2009, at Exhibit 3, page 8 and in Attachment A, page1, sets forth the O&M amounts embedded in the test year Settlement that were removed in compliance with the Interim D&O. The direct CT-1 expenses associated with partial year O&M total $1,369,000, plus $138,000 of on-cost labor overheads and $48,000 of related payroll taxes, for a total CT-1 operating expense impact of $1,555,000.

expense accruals for CT-1 out of income starting in January as long as the CT-1 unit investment remains in PHFFU.

The selection of Option one compared to Option two has implications with regard to the Jointly Proposed RBA/RAM decoupling mechanism in Docket No. 2008-0274. With an approved RAM tariff, classification of CT-1 investment as PHFFU would cause the second half of CT-1 to not be included in the RAM revenue increase for rate base. This occurs because rate base changes under the jointly proposed RAM formula are limited to changes in Plant in Service, CIAC, Accumulated Depreciation and Accumulated Deferred Income Taxes, as more fully specified in the RAM tariff. If the Commission approves the PHFFU Option two approach offered by HECO in its Motion, and desires an accounting for the other half of CT-1 investment that is not allowed in the Docket No. 2008-0083 revenue increases due to rate base averaging, revised specification of the 2010 RAM to expand rate base solely for the CT-1 investment within PHFFU may be required.

E. CONTINUATION OF AFUDC.

HECO's motion proposes an alternative treatment of CT-1 costs if the Commission does not wish to increase electric rates at this time to commence recovery of CT-1 costs. Under its "Option three", HECO seeks Commission authority to "...allow the Company to reclassify the costs of the project included in plant in service to construction work in progress ("CWIP") and to accrue AFUDC until an operational supply of biodiesel is obtained, and to allow a second interim later when the operational

supply of diesel is obtained."[19] According to HECO, "Option one is the preferred option....Option three presents complications, but would compensate the Company for the carrying costs of the investment."[20]

The Division does not support the continuation of AFUDC Option three offered by HECO for several reasons, including:

- AFUDC continuation is not consistent with the Settlement Agreement in the rate case and would ultimately charge ratepayers with higher costs related to CT-1 than HECO agreed was adequate.
- The AFUDC continuation proposed by HECO is not limited to the lower CT-1 capital cost amounts treated as recoverable in the Settlement Agreement (one half of $167 million), but would instead apply ongoing AFUDC accruals to the entire recorded investment, effectively more than doubling the carrying costs ultimately chargeable to ratepayers during the rate effective period for Docket No. 2008-0274.
- AFUDC continuation would serve to increase the overall cost of CT-1 to the long term detriment of ratepayers and contribute to additional cost over-runs, relative to construction cost levels previously reviewed and approved by the Commission in Docket No. 05-0145.
- AFUDC continuation would complicate any Commission-authorized future investigation of CT-1 cost over-runs, by adding ongoing carrying charges

19 HECO Motion at page 6.

20 Id.

to such costs that would require re-calculation if any cost disallowances are ultimately required as a result of audit investigation.

- Reclassification of CT-1 into Construction Work in Progress ("CWIP") with AFUDC continuation would constitute improper retroactive ratemaking unless prescribed only prospectively. The HECO Motion does not specify any effective date for the proposed accounting re-classification and commencing AFUDC reinstatement.
- AFUDC continuation, as proposed by HECO, would require another interim revenue change and the associated administrative complexity and cost, whenever the Company concluded that, "an operational supply of biodiesel is obtained and the project costs are transferred again into plant in service."[21]
- AFUDC continuation, as proposed by HECO, is inconsistent with the general guidelines offered within the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts ("USOA") utility plant instructions.
- While the Consumer Advocate acknowledges the concerns that HECO has articulated regarding the need to recover costs associated with CT-1, the continuation of AFUDC does not impact the immediate collection of revenues (as compared to options 1 and 2).

The added complexity and cost associated with AFUDC continuation argues for its rejection. The Consumer Advocate asserts that either HECO has proven its

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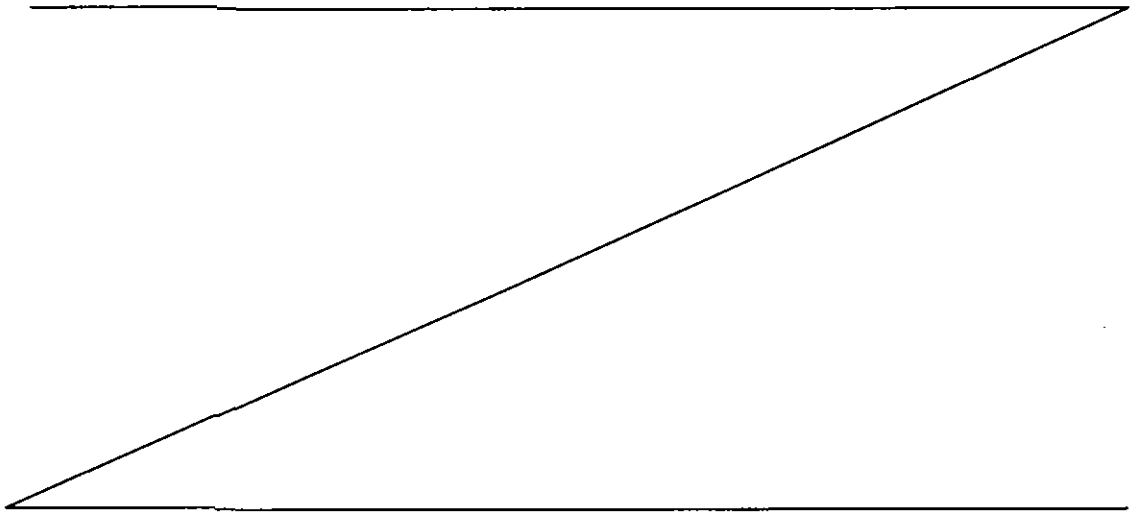
21 Id. page 7.

ratepayers are responsible for the carrying costs of CT-1 at this time or it has not. An affirmative response to this question supports rate base inclusion and a second interim increase at this time (either Option one or Option two). A negative response, while contrary to the Settlement Agreement in this Docket, would support no further cash rate increase or non-cash relief in the form of AFUDC continuation. HECO has offered no support for its Option 3 AFUDC continuation proposal, which should be recognized as merely a stopgap measure that ultimately holds ratepayers fully responsible for CT-1 carrying costs, by forcing them to pay more later to defer cost responsibility now.

If option 3 is entertained, the Consumer Advocate contends that there needs to be language acceptable to the Company's independent auditors from the Commission that will allow reasonable investors to conclude that there is no impairment in the value of the regulatory asset or CWIP balance associated with the CT-1 unit as well as the recoverability of the additional AFUDC earnings that might accrue. Under NARUC USOA instructions, it would seem that HECO would be prohibited from treating a plant item that has been constructed and ready for service as CWIP and AFUDC accrual on that item to continue. Option 3 should not be adopted.



III. CONCLUSION.

Based upon the above, the Consumer Advocate hereby states that it does not object to HECO's request for an additional interim increase of $12,671,000 representing revenue requirements for the Campbell Industrial Park Combustion Turbine Unit Project pursuant to HECO's proposals offered as Options 1 and 2 above.

DATED: Honolulu, Hawaii, December 1, 2009.

Respectfully submitted,

By for CATHERINE P. AWAKUNI
Executive Director

DIVISION OF CONSUMER ADVOCACY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DIVISION OF CONSUMER ADVOCACY'S COMMENTS ON HECO'S MOTION FOR SECOND INTERIM INCREASE FOR CIP REVENUE REQUIREMENTS, OR IN THE ALTERNATIVE, TO CONTINUE ACCRUING AFUDC FOR THE CIP CT-1 PROJECT** was duly served upon the following parties, by personal service, hand delivery, and/or U.S. mail, postage prepaid, and properly addressed pursuant to HAR § 6-61-21(d).

DARCY ENDO-OMOTO
VICE PRESIDENT
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